

ST 98-30

Tax Type: SALES TAX

Issue: Organizational Exemption From Use Tax (Charitable)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 97-ST-
v.)	Acct. #
)	Claim for Credit or Refund
)	
TAXPAYER)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The parties have stipulated to the facts of this case. TAXPAYER (“taxpayer”) reported a use tax liability for August and September 1996. The taxpayer made timely payment at the time the liability was reported. On September 19, 1996, the taxpayer applied for a tax exemption number, which was awarded by the Department of Revenue (“Department”) on October 25, 1996. In February 1997, the taxpayer requested a refund of the use tax paid in August and September 1996 based on its tax-exempt status. The Department issued a Notice of Tentative Denial of Claim on June 11, 1997, which the taxpayer timely protested. After reviewing the record, it is recommended that the matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is a corporation organized and operating pursuant to the laws of the State of Illinois, with its principal place of business at, Chicago, Illinois. (Stipulation # 1).
2. The taxpayer was incorporated, as the TAXPAYER, on August 29, 1995. (Stipulation # 2).
3. On May 24, 1996, the taxpayer amended its Articles of Incorporation to change its name to TAXPAYER (Stipulation # 3).
4. The taxpayer has as the "Purpose or purposes for which the corporation is organized:" on its Articles of Incorporation "To transact any or all lawful businesses for which corporations may be organized under the Illinois Business Corporation Act of 1983, as amended." (Stipulation # 4).
5. The taxpayer is registered with the Department under registration number 2656-1182. (Stipulation # 5).
6. The taxpayer filed a form ST-1, Sales and Use Tax Return, for the period of August 1996. This return reported an Illinois Use Tax liability of \$6,157.94. (Stipulation # 6).
7. The taxpayer filed a form ST-1, Sales and Use Tax Return, for the period of September 1996. This return reported an Illinois Use Tax liability of \$5,931.00. (Stipulation # 7).
8. The taxpayer paid the use tax shown on its August and September 1996 returns by way of corporate checks submitted with the returns. (Stipulation # 8).
9. On September 19, 1996, the taxpayer submitted to the Department an application for a sales tax exemption number, with supporting documentation. (Stipulation # 9).
10. On October 25, 1996, the Department determined that the taxpayer was organized and operated exclusively for educational purposes and issued the taxpayer an Illinois tax exemption identification number. (Stipulation # 10).

11. On February 24, 1997, the taxpayer prepared Amended Sales and Use Tax Returns, forms ST-1-X, for August and September 1996, requesting credit or refund of the tax paid for these periods. (Stipulation # 11).
12. The Department's records indicate receipt of the amended returns on February 25, 1997. The Department issued its Notice of Tentative Denial of Claim, denying the taxpayer's claims for refund or credit, on June 11, 1997. (Stipulation # 12).
13. The taxpayer filed a timely protest in response to the Department's Notice of Tentative Denial of Claim. (Stipulation # 13).
14. On November 17, 1995, the taxpayer was granted a certificate of approval and authorization by the Illinois Board of Higher Education to grant degrees in its fields of instruction. (Stipulation # 14).

CONCLUSIONS OF LAW:

Illinois law imposes a tax on the use of all tangible personal property purchased from a retailer. 35 ILCS 105/3 (West 1996). However, personal property purchased by an institution organized and operated exclusively for educational purposes is exempt from use tax in Illinois. 35 ILCS 105/3-5(4) (West 1996). To take advantage of this exemption and make tax-free purchases an educational institution must have an active exemption identification number issued by the Department. Id.

The taxpayer clearly did not have an active exemption identification number when the liabilities reported on its August and September 1996 returns were incurred. Both parties have stipulated that the taxpayer filed for an exemption identification number on September 19, 1996 and was granted such a number on October 25, 1996. This exemption number was not active in August or September of 1996 and the taxpayer was not entitled to make tax-free purchases at those times.

The taxpayer argues that the requirement of having an exemption number before making tax-free purchases does not preclude taxpayers from requesting refunds for earlier purchases once their exempt status has been confirmed by the issuance of an exemption number. In making this argument, the taxpayer assumes that the exemption number was intended to apply retroactively to all purchases made by an exempt organization. However, exemption statutes must be strictly construed and may not be expanded through interpretation. Follett's Illinois Book & Supply Store, Inc. v. Isaacs, 27 Ill.2d 600, 606 (1963). Any debatable question must be resolved in favor of taxation and against exemption. Id. Further, the burden is on the taxpayer to prove that an exemption applies to any given transaction. United Air Lines, Inc. v. Johnson, 84 Ill.2d 446, 455 (1981). There is nothing in the language of the statute creating the exemption that indicates it was intended to apply to purchases made prior to the awarding of an exemption number. Just the opposite, the statute explicitly states that no tax-free purchases may be made without an active exemption number. The taxpayer has shown no evidence that this provision should be applied retroactively. The taxpayer has not met its burden of showing the transactions in August and September 1996 were entitled to an exemption from use tax and is not entitled to a refund.

It is not necessary to address the issue of whether the taxpayer is entitled to a tax exemption identification number. The liabilities in question were incurred in August and September of 1996, and the taxpayer was not awarded an exemption number until October 25, 1996. Whether it was appropriate for the Department to issue the taxpayer an exemption number after these purchases were made is irrelevant to this cause of action. The question of whether the August and September purchases were exempt from use tax can be resolved regardless of the status of the taxpayer's exemption number from October of 1996 to the present. The Department can initiate separate proceedings if it wants to revoke the exemption number issued to the taxpayer.

It is therefore recommended the taxpayer's Claim for Credit or Refund be denied.

Administrative Law Judge

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